

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Kreg Kantak & Gail Kantak
Facility ID #57821 – Hamilton County

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO-50

TO:
Mr. and Ms. Kantak
1352 250th Street
Webster City, IA 50595

I. SUMMARY

This administrative consent order is entered into between Kreg & Gail Kantak (the Kantaks) and the Iowa Department of Natural Resources (Department) for the purpose of resolving the issues surrounding animal feeding operation violations discovered by Department Field Office 2. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Eric Wiklund Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
PO Box 1443
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the
DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter

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459, Subchapter III, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties

III. STATEMENT OF FACTS

1. The Kantaks own a confined animal feeding operation (CAFO) located in Section 7, T 87 N, R 26 W, Webster Township, Hamilton County, Iowa. This property is locally known as 2966 Stagecoach Rd, Stratford, Iowa. The facility was constructed in 1990 and expanded in 1994. The operation consists of 3 buildings and is a swine finishing facility with a total capacity of 3,668 head (1467.2 animal units). One building uses an uncovered, formed manure storage structure, and the other two use formed under-building pits.

2. On April 27, 2010, the Kantaks were issued a Notice of Violation for failure to submit a manure management plan (MMP). This letter stated that the Department received a MMP in 1997; however, the Department has not received any updates or a Phosphorus Index. This letter required that a Phosphorus Index MMP be submitted along with the relevant fees.

3. On May 10, 2010, the Kantaks submitted an MMP to the Department along with the filing fee, the 2010 compliance fee, and the indemnity fee.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 459.312(1)"a"(1) and 567 IAC 65.16(1)"b" requires that the owner of a confinement feeding operation constructed or expanded after May 31, 1985, other than a small feeding operation, shall submit a manure management plan to the Department. Iowa Code section 459.102(47) defines a "small animal feeding operation" as an operation with an animal unit capacity of five hundred or fewer animal units. This requirement became effective May 12, 1999 and applied retroactively. The Kantaks' facility was constructed in 1990 and expanded in 1994 and has an animal unit capacity of 1467.2 animal units. Until recently, the Kantaks had failed to submit a MMP since at least 2003. The above facts indicate a violation of this provision.

3. 567 IAC 65.16(3) requires that all persons required to submit a MMP to submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The compliance fee is fifteen cents per animal unit. The Kantaks should have filed eight updated MMPs and fees. The annual compliance fee is \$146.72.

V. ORDER

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THEREFORE, the Department orders and the Kantaks agree to do the following:

1. The Kantaks shall pay past annual compliance fees for the following years: 2003, 2004, 2005, 2006, 2007, 2008 and 2009, for a total of \$1027.04. The past compliance fees shall be submitted within 30 days of the date the Director signs this administrative consent order; and
2. The Kantaks shall pay a penalty of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – The failure of the Kantaks to comply with the animal feeding operation regulations has allowed them to achieve an economic benefit. The Kantaks have achieved an economic benefit by delaying the payment of the compliance fees, indemnity ~~fees and preparation costs for the MMP.~~ The Kantaks should have filed eight annual MMP updates. The Kantaks were also able to avoid the cost of MMP recordkeeping and possible operating restrictions since at least 2003. The Kantaks gained an economic benefit over producers who timely filed MMPs. The economic benefit received by the Kantaks is estimated to be \$500.00.

Gravity – The Kantaks' failure to obtain a MMP threatens the integrity of the animal feeding and the water quality programs in the state of Iowa. The MMP is a crucial aspect of the Department's animal feeding operation program. The plan ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. Based on the above considerations, \$1,500.00 is assessed for this factor.

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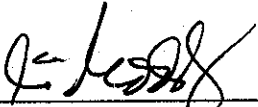
Culpability - All animal feeding operation owners and operators have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that the operation is subject to the Department's rules. Animal feeding operations are a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. Additionally, the Kantaks operate six other CAFOs which all timely filed MMPs. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of the Kantaks. For that reason, the Kantaks waives their right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this administrative consent order.

Patricia M. Trudell

Richard A. Leopold DIRECTOR
Iowa Department of Natural Resources

Dated this 20 day of
October, 2010.


Kreg Kantak

Dated this 14 day of
October, 2010.


Gail Kantak

Dated this 14th day of
October, 2010.